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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

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5
6 ENERKON SOLAR INTERNATIONAL, INC.,
a Nevada corporation,

7 Plaintiffs,

8 vs.

9 JOHN V. CAPPELLO, *et al.*,

10 Defendants.

2:21-cv-01122-JCM-VCF

ORDER

11
12 Before the Court is the Application to Serve by Publication and to Extend the Time for Service
13 (ECF No. 48). Plaintiff is requesting service by publication on Defendant Jonathan Baker and for an
14 additional 90 days extension.

Service By Publication

15 Pursuant to Fed. R. Civ. P. 4(e)(1), “an individual – other than a minor, an incompetent person, or
16 a person whose waiver had been filed – may be served in a judicial district of the United States by
17 following state law for serving a summons in an action brought in courts of general jurisdiction in the state
18 where the district court is located or where service is made.” Under Rule 4(e)(1) of the Nevada Rules of
19 Civil Procedure, “when the person on whom service is to be made resides out of the state, or has departed
20 from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid
21 the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge
22 thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action
23 exists against the defendant in respect to whom the service is to be made, and that the defendant is a
24 necessary or proper party to the action, such court or judge may grant an order that the service be made
25 by the publication of summons.”

1 Plaintiff asserts that after diligent effort, it is unable to serve Jonathan Baker. In support of this
2 assertion, Plaintiff provided the court with the Declaration of H. Stan Johnson on Due Diligence and
3 correspondences with the process server listing the attempted services. (ECF No. 48 at p. 5, and exhibit
4 1).

5 The process servers have attempted service at several addresses on July 30, 2021, August 10, 2021,
6 and August 14, 2021, but were unsuccessful. *Id* at p. 5.

7 The court finds that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1), permitting
8 service by publication of the Summons and Complaint is warranted on Jonathan Baker.

9 Under Federal Rule of Civil Procedure 4(e), a plaintiff may serve an individual in the United States
10 using any method permitted by the law of the state in which the district court is located or in which service
11 is affected. Fed. R. Civ. P. 4(e)(1). Here, Jonathan Baker's last known addresses are in Texas at 1701
12 Towne Crossing Blvd., Apt. 425 Mansfield, TX 76063 and 3006 Franciscan Drive, Apt. 133 Arlington,
13 TX 76015.

14 The Court GRANTS Plaintiff's motion. The court finds that pursuant to Fed. R. Civ. P. 4(e)(1)
15 and Nev. R. Civ. P. 4(e)(1), permitting service by publication of the Summons and Complaint is warranted
16 on Jonathan Baker. Pursuant to Rule 4(e)(1)(iii), the publication must be made in a newspaper, published
17 in the State of Nevada, for a period of 4 weeks, and at least once a week during said time. Nev. R. Civ.
18 P. 4(e)(1)(iii).

19 Publication of notice must also be conducted in a manner consistent with the state of Texas.
20 Plaintiff must also mail with acknowledgment of receipt, a copy of the Summons and Complaint to
21 Jonathan Baker at his last known addresses.

22 **Extension For Service**
23
24
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1 Fed. R. Civ. P. 4(m) requires a defendant to be served within 90 days after the complaint is filed.
2 If “the plaintiff shows good cause for the failure [to serve a defendant within that time-frame], the court
3 must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

4 Given that Plaintiff has demonstrated “good cause” for her failure to effectuate service, the court
5 will extend the 4(m) deadline, up to and including February 1, 2022. *See* Fed. R. Civ. P. 4(m).

6 Accordingly, and for good cause shown,


7 IT IS HEREBY ORDERED that Application to Serve by Publication and to Extend the Time for
8 Service (ECF No. 48) is GRANTED.

9 IT IS FURTHER ORDERED that Plaintiff is permitted to serve Jonathan Baker by publication. A
10 copy of the summons and amended complaint must be mailed to Jonathan Baler at his last known
11 addresses by certified U.S. Mail, return receipt requested.

12 IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(e)(1), Fed. R. Civ. P. 4(e)(1)
13 permitting service by publication of the Summons and Complaint is warranted on Jonathan Baker.
14 Pursuant to Rule 4(e)(1)(iii), the publication must be made in a newspaper, published in the State of
15 Nevada, for a period of 4 weeks, and at least once a week during said time. Nev. R. Civ. P. 4(e)(1)(iii).
16 Publication of notice must also be conducted in a manner consistent with the state of Texas.

17 IT IS FURTHER ORDERED that the deadline to effect service of process is extended up to and
18 including February 1, 2022 for Defendant Jonathan Baker.

19 DATED this 3rd day of November, 2021.

20 
21 CAM FERENBACH
22 UNITED STATES MAGISTRATE JUDGE
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